87-200

Supreme Court, U.S.
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CLERK

No. _____

In the Supreme Court of
the United States

July Term, 1987

Mitch Vanya, Max Cantrell, George Kay, Raymond Lyons, Charles Mankey, Raymond Roberts, Frank Sebesta, George Simmons, John Varner, L.D. Washington

Petitioners,

vs.

United States of America

Respondent.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

Michael Louis Minns
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10200 Old Katy Road #101
Houston, Texas 77043
(713) 461-5471

ATTORNEY FOR PETITIONERS

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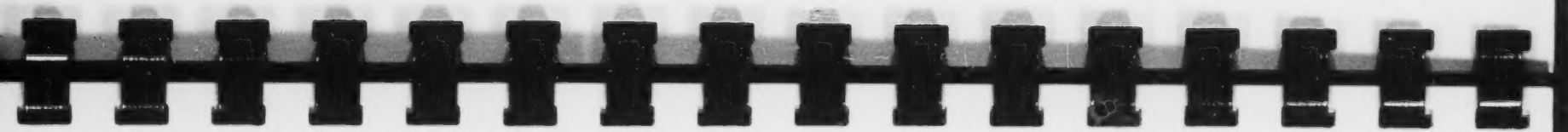

QUESTIONS PRESENTED FOR REVIEW

QUESTION I: Is it within the discretion of the Judiciary to re-evaluate and modify the Congressional intent of a statute?

QUESTION II: Is it within the discretion of a U.S. Circuit Court of Appeals to modify the Trial Court's judgment to make it fit the opinion the Circuit Court wishes to render?

QUESTION III: Did the Fifth Circuit Court of Appeals err in affirming Trial Court's award of attorneys' fees which permitted Government's attorneys greater latitude in proving up the value of their attorney's fees than would normally be permitted?

LIST OF ALL PARTIES TO THE PROCEEDING

Original Plaintiffs/Appellants

Emmett Doyle	Mitch Vanya *
James Beckett	Max Cantrell *
James Clark	John Dial
Rudolph Helton	George Kay *
Raymond Lyons *	Charles Mankey *
Larry McMain	Robert Mendez
Haskell Muse	Bert Phillips
Elbert Porter	Steve Potvin
Raymond Roberts *	Frank Sebasta *
George Simmons *	Kenneth Skeen
Robert Thornton	John Varner *
L. D. Washington *	Shirley Winn
Robert Dale Nettles	

*THESE PLAINTIFFS WERE APPELLANTS IN CAUSE NO. 86-6004

Defendants/Appellees

United States of America *
Internal Revenue Service
EBASCO Services Incorporated
Barry L. Wold
Other Unknown Agents, Officers and Employees of the Internal Revenue Service

*Only the Defendant, United States of America, has been active as an Appellee

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STATUTES

Not Applicable

UNITED STATES CONSTITUTION

Separation of Powers Doctrine

MISCELLANEOUS

Rule 11, Federal Rules of Civil Procedure

No._____

In the Supreme Court

of the

United States

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Mitch Vanya, Max Cantrell, George Kay, Raymond Lyons, Charles Mankey, Raymond Roberts, Frank Sebesta, George Simmons, John Varner, L.D. Washington

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United States of America

Respondent.

_____

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

_____

To The Honorable Chief Justice of the United States, and To The Associates Justices of the United States Supreme Court:

The above-named Petitioners file this

Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed the Trial Court's decision.

In support of the Petition, the following is respectfully shown to this Honorable Court:

OPINIONS BELOW

The original petition in this matter was filed by twenty five (25) pro-se Plaintiffs in the Southern District of Texas, Houston Division, and was assigned to Judge Norman Black. A copy of the Trial Court's Judgment, dismissing the case and assessing costs and attorneys' fees against each individual Plaintiff, is attached as Appendix "A".

Ten (10) of the original twenty five (25) Plaintiffs brought an appeal of this Final Judgment. The Appeal to the Fifth Circuit Court of Appeals was based solely

on the issue of the multiplicity of sanctions awarded to the United States of America and on the standard of proof of attorneys' fees and costs. The United States Circuit Court of Appeals for the Fifth Circuit affirmed the decision of the Trial Court in a published decision. A copy of The Appellate Court's opinion is included as Appendix "B".

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The opinion and order of the Fifth Circuit Court of Appeals is dated and was filed and entered on the 2nd day of June, 1987.

Jurisdiction to review the judgement of the Court of Appeals by Writ of Certiorari is vested in the Supreme Court of the United States.

STATUTES INVOLVED

The Trial Court's Judgment, the opinion of the Fifth Circuit Court of

Appeals and this Petition herein are all based on Rule 11, Federal Rules of Civil Procedure.

SUMMARY OF THE CASE

On or about the 26th day of November, 1985, a group of twenty-five (25) employees of EBASCO Services, Inc. filed what was a federal civil action for "declaratory and injunctive relief and money damages", Cause No. H-85-6522 against the United States of America, Internal Revenue Service, EBASCO Services, Inc., Harry L. Wold and Others Unknown. (Transcript page 233).

The suit was apparently drawn up by an unlicensed individual acting as an "attorney". The suit was signed by all twenty-five (25) of the pro-se Plaintiffs. The individual who drafted the suit subsequently abandoned the group without telling them that he would render no further "assistance" in the

case. (Transcript pages 8, 9 and 10). The Plaintiffs were unaware that they had failed to comply with any legal or procedural requirements.

Plaintiffs' Original Petition (transcript pages 233 through 340) was incompetently drafted and urged some legal points overruled a century ago. However, contrary to Government's position, one issue raised in Plaintiff's Original Petition, that of the Government's labeling large numbers of citizens as "illegal tax protestors" raised legitimate civil rights and First Amendment issues which should have been explored.[1] Nevertheless, the Plaintiffs were not represented by counsel, did not

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1 Trial Court's granting the Government's Motion to Dismiss ignored the fact that the Internal Revenue Service was violating the First Amendment rights of individuals by calling them "illegal tax protestors" when in point and in fact there can be no illegal tax protesting in the United States unless it incites to riot or,

know how to proceed, and were unable to distinguish which of their causes of action were frivolous and which had merit.

Plaintiffs failed to have their petition properly served on the Defendants. Plaintiffs also failed to respond to Government's Motion to Dismiss or For Summary Judgment filed February 3, 1986. On August 19, 1986, Trial Court Judge Norman Black dismissed the cause of action against EBASCO Services, Inc. for want of prosecution. He further granted the Motion to Dismiss or For Summary Judgment filed by the United States of America and the Internal Revenue Service. He directed that the United States of America submit a final judgment consistent with said Order, including an

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encourages threats of bodily harm or other serious problems. The entire direction of the Fifth Circuit in these types of cases violates the spirit of the First Amendment of the Constitution of the United States.

affidavit for attorneys' fees. He determined that attorneys' fees and costs should be assessed against each Plaintiff individually. The record does not sufficiently demonstrate that the ten (10) Petitioners received notice of the Government's motion.

On September 29, 1986, Judge Norman Black signed a Final Judgment in Cause No. H-85-6522. Said Judgment was accompanied by two (2) documents entitled the "Declaration of Thomas G. Norman" (transcript pages 13 through 15) and the "Declaration of Timothy Wagnor" (transcript pages 16 through 18). These documents set forth a claim that a total of ONE THOUSAND FIVE HUNDRED FIFTY FOUR AND 88/100 DOLLARS ($1,554.88) was expended by the United States Government in this cause of action. A Bill of Costs was prepared for said amount. Pursuant to the Trial Court's final judgment, this

cost was taxed against each Plaintiff individually.

Of the twenty-five (25) original Plaintiffs, eleven (11) took no further action following the final judgment. Four (4) of the original Plaintiffs filed a Pro-se Motion for New Trial (transcript pages 8, 9 and 10) but failed to perfect their appeal. Ten (10) of the original Plaintiffs retained the services of licensed counsel to represent them in an Appeal to the Fifth Circuit Court of Appeals.

A timely Notice of Appeal was filed for those ten (10), Petitioners herein. The Appeal was based solely on two (2) issues:

1) The multiplicity of sanctions awarded against each Plaintiff individually, which, if collected, would cause the Government to reap a windfall of THIRTY EIGHT THOUSAND EIGHT HUNDRED

SEVENTY TWO DOLLARS ($38,872.00) to compensate for alleged legal expenses of ONE THOUSAND FIVE HUNDRED FIFTY FOUR AND 88/100 DOLLARS ($1,554.88); and,

2) The second issue involved inadequacies in the affidavits of the Government "attorneys" in proving up their fees, which failed to state that they were licensed attorneys and which failed to aver that their work was necessary and that their fees were reasonable. Attorneys working for clients other than the Government are normally held strictly to standard formulas in proving up their attorneys' fees.

The United States Court of Appeals for the Fifth Circuit upheld the Trial Court's judgment. This Petition for Writ of Certiorari raises the issues that the Appellate Court erred in affirming the Trial Court's judgment and that the Appellate Court exceeded its jurisdiction

by, in effect, modifying the intentions of Congress in regard to Rule 11, Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

QUESTION I

Is it within the discretion of the Judiciary to re-evaluate and modify the Congressional intent of a statute?

Rule 11, Federal Rules of Civil Procedure, as amended on April 28, 1983, effective August 1, 1983, states, in relevant part:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

Rule 11 further allows for sanctions to be taken against the signer of a

pleading which violates the foregoing provisions:

> "If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee."

Rule 11 thus provides a Trial Court a variety of sanctions which the Court could choose to impose upon individuals whom the Court deems have filed "frivolous" pleadings.

(1) The Court could impose a sanction in some dollar amount, without connnecting that sanction to attorneys' fees or costs. (A sanction of an unreasonable amount would probably be unconstitutional and would be a deprivation of due process.)

(2) The Court could assess

reasonable attorneys' fees against the offender.

(3) The Court could assess both a dollar amount as a sanction and another amount as reasonable attorneys fees.

The Fifth Circuit has been taking a firm stand on the necessity of a Trial Court's imposing sanctions when a violation of Rule 11 has been determined. In Thomas v. Capital Security Services, Inc., 812 F.2d 984, (1987), the Fifth Circuit held that:

> "...district courts can no longer selectively impose sanctions when a violation of Rule 11 is established ... under our current practice there are no 'free passes.'"

The Petitioners herein are not asking this Court to find that no sanction at all should have been imposed. The Petitioners herein are merely pointing out that the Fifth Circuit, because of its strong feelings on the issue of sanctions for "frivolous pleadings" has,

in this case, attempted to rewrite Rule 11, and modify the intent of Congress as to the nature of the sanctions which may be imposed.

The Record clearly and unequivocally shows that the Trial Court in this case granted sanctions against the pro-se Plaintiffs, in the amount of costs and reasonable attorneys fees expended by the Government to defend itself against the original suit. There is no statutory basis for the multiple assessment of the same costs and attorneys fees twenty-five (25) times over! These is no statutory basis for the awarding of "unreasonable attorneys fees". If the government attorney Thomas G. Norman testified that his time should be valued at Seventy Five Dollars ($75.00) an hour, why are his services being reimbursed at the rate of One Thousand Eight Hundred and Seventy Five Dollars ($1,875.00) an hour?

The opinion of the Fifth Circuit Court of Appeals stated:

> "We think the district court's decision was a wise and equitable resolution of the difficult task of setting 'an appropriate sanction' for frivolous lawsuits by pro-se litigants. Each plaintiff was required to pay back through Government to other taxpayers the cost of his frivolous behavior had he filed an individual lawsuit and not sought the psychological and financial refuge of aggregate frivolity."

Petitioners assert that the Fifth Circuit Court of Appeals exceeded its jurisdictional authority and usurped the role of Congress in arriving at the foregoing conclusion. The intent of Congress in amending Rule 11 was obviously to discourage the filing of frivolous pleadings and to fairly recompense an opposing party in litigation who had been damaged by the filing of frivolous pleadings. The intention was clearly not a vindictive one. Congress did not intend to pauperize

a signer of frivolous pleadings. Neither did Congress intend a party who had incurred expenses due to frivolous pleadings to reap the unwarranted bonanza of receiving not only his actual expenses, but a heaping multiple of them! There is no case law and no statutory permission for the judiciary to direct Rule 11 with special force against class action or multiple litigants.

The Plaintiffs filed one (1) suit. The Fifth Circuit Court of Appeals and the Trial Court wants them to pay for twenty five (25) suits. Photocopies are relatively inexpensive. The Plaintiffs could have made twenty-five (25) copies of their petition, had each one signed by one Plaintiff, and filed twenty-five (25) separate suits (just as the Government prepared twenty-five separate Bills of Costs and attorney declarations). This Honorable Court may take notice of the

fact that although twenty-five Bills of Cost were sent out, there were not twenty-five notices of the Motion for Summary Judgment sent out. Perhaps if there had been, one or more of the Plaintiffs would have been able to secure competent legal assistance and prepare an answer thereto. The point is, that the twenty-five (25) Plaintiffs filed one (1) lawsuit. The Government had no additional expense (until after the Final Judgment) because there were twenty-five Plaintiffs rather than one (1). A literal reading of the Fifth Circuit decision seems to command a multiplicity of suits rather than one - the sanctions are not against the mere conduct but specifically directed against associations in litigation.

There is abundant case law in which multiple sanctions are denied. In Di Silvestro vs. The United States of

America, 767 F.2d 30, (Second Circuit, 1985), a pro-se Plaintiff, a World War II veteran, had been filing unsuccessful suits for three (3) decades, against the United States Government regarding the denial of his veteran's disability benefits. A District Court had previously permanently enjoined him from the filing of any more such suits. Nevertheless, he filed another such petition. The Trial Court assessed attorneys' fees of Seven Hundred Fifty Dollars ($750.00) against DiSilvestro. The Government's request for double costs and attorneys' fees was denied, despite DiSilvestro's deliberate disobedience to a Court order and his thirty (30) years of harassing litigation against the Government. In the case sub judice, costs and attorneys fees were multiplied twenty-five (25) times on the first occasion the Plaintiffs had ever filed such litigation.

There is case law supporting the proposition of joint and several liability for sanctions. In Robinson vs. National Cash Register Company, Slip Op. 85-2019, (Fifth Circuit, Feb. 4, 1987), two individuals, an attorney and his client, were found jointly and severally liable for sanctions in the amount of Four Thousand Two Hundred Forty Six and 25/100 Dollars ($4,246.25). Similarly, in Hudson vs. Moore Business Forms, Inc., 609 F. Supp. 467, (U.S.D.C., N.D. California, 1985) the lawfirm and the individual attorneys who signed the pleading which was deemed frivolous were found jointly and severally liable for the sanctions which were assessed. In the instant case, the Trial Court had the option of finding all twenty-five (25) of the Plaintiffs jointly and severally liable for the One Thousand Five Hundred Fifty Four and 88/100 Dollars

($1,554.88), but did not see fit to do so. The Fifth Circuit Court of Appeals affirmed the Trial Court in its decision.

In Weisman vs. Rivlin, 598 F. Supp. 724, (U.S. District Court, Dist. of Col., 1984), an award for excessive attorneys' fees was struck down as being "excessive and inappropriate" in light of the amount of work that was done and in consideration of the fact that the Plaintiff who had filed the frivolous pleading was "engligent" but not "willful". For the Government in the instant case to reap a windfall of twenty-five (25) times its reasonable expenditures would be far more excessive and inappropriate than the fees sought and denied in Weisman.

To summarize, the Fifth Circuit Court of Appeals, by upholding the Trial Court's award of multiple sanctions, each in the full total amount of the

Defendant's expenses, has usurped the role of Congress. No Court of Appeals or Trial Court should exercise its power to modify Congressional intent, however laudable the Court's expressed motive may be. The intent of Rule 11, Federal Rules of Civil Procedure was to provide for REASONABLE ATTORNEYS FEES AND COSTS, and/or a REASONABLE SANCTION against the signers of frivolous pleadings. The Fifth Circuit has rewritten the Rule to provide for "UNREASONABLE ATTORNEYS FEES AND COSTS". The Appellate Court has taken on the proper role of the legislature, in violation of the separation of powers doctrine of the Constitution of the United States.

QUESTION II

Is it within the discretion of a United States Circuit Court of Appeals to modify the Trial Court's judgment to make it fit the opinion the Circuit Court

wishes to render?

The Trial Court's Final Judgement unambiguously stated that the sum of money assessed against each Plaintiff was for "attorneys fees and costs". (See Appendix A). The Trial Court, in its Order of August 19, 1986, specifically directed the Government attorneys to submit affidavits proving up their fees and costs. If the Trial Court had intended to exercise its other statutory option and assess an arbitrary sum of money as a "sanction", it could have done so, without tying in the dollar amount to attorneys' fees or requiring proof thereof.

The Fifth Circuit Court of Appeals, due to its strong stand in general on sanctions for frivolous pleadings and further due to the bias which the Fifth Circuit has been demonstrating for quite some time against people alleged to be

"tax protestors", desired to affirm Trial Court's Final Judgment in this matter. However, the Fifth Circuit apparently determined that it would not be possible to affirm the Trial Court's Order, as written. The Fifth Circuit took it upon itself to modify the Court's Order by simply treating the Order as if it had been worded differently. The Fifth Circuit declares that the amount of One Thousand Five Hundred and Fifty Four and 88/100 Dollars ($1,554.88) would have been a reasonable "outright sanction" (see Appendix B) against each individual Plaintiff. Therefore, the Fifth Circuit reasons, the Trial Court's Order might just as well be treated as if it read "sanctions of One Thousand Five Hundred Fifty Four and 88/100 Dollars" instead of reasonable attorneys fees and costs of that amount. The Fifth Circuit further observes that:

> "appellants make no contention that such an award would be an abuse of discretion, and had they done so we would have rejected it."

Petitioners made no such contention because it was never an issue in the order. The Fifth Circuit implied that the Petitioners did not argue a fact not in issue. Petitioners did not want to waste the time of the Fifth Circuit Court of Appeals raising issues that were never raised in the Trial Court. Why should they object to "abuse of discretion" on sanctions when the Trial Court did not exercise its discretion on additional sanctions but, specifically referred to the sum of money awarded as being for "attorneys fees and costs".

The Fifth Circuit in sustaining the Trial Court's Order ignored the language of the Trial Court's Order and found as a matter of law that the ONE THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS ($1,554.00) would have been a reasonable additional

sanction if it had been ordered as an additional sanction. The Trial Court did not so rule. The Trial Court ruled for multiple payment of attorney's fees. In order to support the Trial Court's the Fifth Circuit simply changed the Trial Court's ordered words. In order to create a harsh statutory penalty under Rule 11, the Trial Court said that it was, as a matter of law, proper to award multiple attorney's fees for the first time in any recorded case in the history of the United States against joint wrong doers. They stated that the intent of the Court was to prevent there being safety in numbers and minimizing the direct effect of sharing and spreading the risk. Unfortunately, for the Fifth Circuit this is precisely what people do when they join in a multitude in support of a position or cause. There is strength in unity and strength in

spreading the risk. Partnerships do it, class action litigants do it, and even tax protestors do it. The non-violent tax protestor movement which encompasses the President of the United States, formerly encompassed John Wayne and other notables, is certainly not as pernicious and frightening as organized crime and yet the Fifth Circuit has now created this remedy of multiple attorney's fees which even in the current interpretations of the RICO act is not mandated.

If the Trial Court had wanted to impose more than reasonable attorney's fees as sanctions, the Trial Court could and should have stated so. The Petitioner could then have decided whether to accept the Court's Judgement or contest it. It didn't. The Judgement was therefore erroneous and the Fifth Circuit Court of Appeals ruling altering it was erroneous.

The Federal Government, because of

the dearth of cases supporting its position (there were none) attempted to create cases by citing cases in which multiple costs were awarded against the party under the Appellate Rules of Civil Procedure. It is abundantly clear that Congress did not intend to allow multiple attorney's fees because Congress specifically left it out and specifically said "reasonable attorney's fees." The Fifth Circuit has now judicially amended Rule 11. (See Question I). The Fifth Circuit has also tampered with the Trial Court's Judgement to correct it so that it reflects sanctions instead of merely "reasonable attorney's fees."

QUESTION III

Did the Fifth Circuit Court of Appeals err in affirming Trial Court's award of attorneys' fees in a situation where Government's attorneys were permitted greater latitude in proving up

the value of their attorney's fees than would normally be permitted?

There are well established formulas which should be followed by an attorney in proving up the value of his or her attorneys fees and fully expounded in such cases as Johnson vs. Georgia Highway Express Inc., 488 F.2d 714, (Fifth Circuit, 1974), and the recent Abrams vs. Baylor College of Medicine, Slip Op. No. 84-2475, (Fifth Circuit, Dec. 8, 1986). In Abrams, the Fifth Circuit vacated trial court's judgment and remanded the case for redetermination because the Judge had abused his discretion in awarding attorneys' fees which were not properly proven up under the Johnson standard.

In the instant case, the "Declarations" of the Government attorneys fell far short of the normal standard. They did not swear that they

were licensed members of a Bar. They did not swear that their work was necessary or that their rates were reasonable. One might assume on a patently frivolous recently litigated issue a minimum of work would be mandated for a summary judgment without an oral hearing.

Thomas Norman's Declaration on attorney's fees referred only to a statute which was not even relevant to the case, but instead referred to a rate that parties prevailing AGAINST the Government might recover in hourly attorneys' fees. Ms. Mary L. Vance, Tax Division Attorney, did not even swear to the value or necessity of her fees.

In its opinion, the Fifth Circuit stated that unopposed affidavits (that may theoretically as a matter of law fail to support the evidentiary findings which they were purportedly prepared to support) are, nevertheless, fine if a

controverting affidavit is not filed. Why? Why does a controverting affidavit have to be filed if the affidavit fails to support the proposition that "a) attorney's fees were reasonable; and, b) the practitioners swearing to the attorney's fees were licensed members of an accepted Bar association." (In fact, the record indicates one or more of the declarants were not licensed attorneys).

The case law rejecting attorney's fees for people not licensed by any of the Bar multitudiouness. The Fifth Circuit has now stated that as a matter of law, attorney's fees for the Government are reasonable and as a matter of law, attorney's fees from a Government agent do not have to be proven up through a member of a recognized federal or state Bar. However, in every single reported case, attorney's fees for the other side of the docket must be supported by a

recognized member of a Bar. The appellate opinion conflicts with all of the existing law in all circuits, including the guidelines established by the Fifth Circuit in Johnson (supra).

The Fifth Circuit Court of Appeals is setting up a dangerous, unAmerican and unConstitutional double standard wherein Government attorneys have become a privileged class, in violation of the Constitutional provision against creating any privileged class of individuals. Why should they be exempt from the strict requirements of swearing that they are licensed members of the bar; that their work was necessary; and that their fees were reasonable? Petitioners request that this Honorable Court utter a resounding affirmation of uniform standards for all attorneys as to proof of the value of their attorneys' fees, whether they are representing the Government, a multi-

million dollar corporation or an indigent individual.

REASONS FOR ALLOWANCE OF THE WRIT

The Fifth Circuit Court of Appeals has far overstepped the bounds of its discretion in order to champion its bias in favor of swift, strong sanctions of what it deems "frivolous pleadings" and against those individuals it chooses to label as "tax protestors". This zeal for its cause has led the Fifth Circuit Court of Appeals to rewrite Rule 11, Federal Rules of Civil Procedures to permit the award of "unreasonable attorneys fees" instead of reasonable ones, and to allow the Government to reap an unearned bonanza of twenty-five (25) times the amount it expended in its defense of the original cause of action. The main issue in this case is judicial modification of a statute. The deterioration of the separation of powers doctrine so wisely

established by our Founding parents should equally alarm those of both the Liberal or the Conservative persuasion. The fact that the modification of the statute (in this case) has been done for the benefit of the Government should be irrelevant. The Appellate Court should have no power to arbitrarily modify legislative intent. This case is extremely important for this Court to review, because it exemplifies a serious, detrimental current of change in our Circuit Courts, that being: a) The continued trend of the judiciary to usurp the authority of Congress; and, b) The continued trend of the judiciary to join the executive in its goals, rather than supporting due process, constitutional rights and the basic theory of the separation of powers.

The judiciary is becoming a new Congress and a partner of the executive

branch in the enforcement of congressional mandates (as changed by the judiciary for the benefit of the executive), thus seriously eroding the separation of powers doctrine established in the Constitution of the United States.

In addition, the Appellate Court in this case rode roughshod over the Trial Court's right to have its final judgment considered as it was written, not as it was tortured and bent out of shape to fit the preconceived design of the Fifth Circuit. The Appellate Court tried to second-guess the mind of the Trial Court, saying that there were several options the Trial Court had open, therefore it is meaningless that the Trial Court chose one option over another. Yet the precise language of the Final Judgment is at the heart of the matter. The Appellate Court certainly has the power to review the decisions of the Trial Court - to affirm,

reverse, remand, instruct or even do a combination of these - but it has no right to twist the Trial Court's opinion into its own mold, and reduce the Trial Court Judge to a mere child under the control and editing of the Appellate panel.

Further, the Appellate Court's error must be brought to light so that an unfortunate precedent does not get set, that of an unConstitutional double standard for Government's attorneys to prove up their fees and costs with a lesser degree of than is required of other attorneys. This precedent could be far-reaching, extending even beyond a benevolent wink of the judicial eye to attorneys who work directly for the government, but could mean a granting of privilege to those attorneys who are representing individuals or entities who, for some reason, find an extra

measure of favor with the Court, or who, themselves, are highly esteemed by the Court, for whatever reason.

CONCLUSION

For all of these reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL LOUIS MINNS, P.L.C.

BY: _____

Michael Louis Minns
10200 Old Katy Road #101
Houston, Texas 77043
(713) 461-5471

CERTIFICATE OF SERVICE

I, do hereby certify that a true and correct copy of this Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, has been properly served upon the following parties, as follows:

Mr. Joseph F. Spaniol, Jr., Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543
(Overnight Delivery)

Ms. Louise P. Hytken
U.S. Department of Justice
Tax Division
5B31 Federal Office Building
1100 Commerce Street
Dallas, Texas 75242-0599
(Certified Mail, Return Receipt
Requested No. P 247 334 562)

Mr. Michael L. Paup
Chief, Appellate Section
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044
(Certified Mail, Return Receipt
Requested No. P 247 334 563)

Solicitor General
Department of Justice
Washington, D.C. 20530
(Certified Mail, Return Receipt
Requested No. P 247 334 564)

Michael Louis Minns

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

EMMETT DOYLE, et al.,

Plaintiffs

VS. CIVIL ACTION NO. H-85-6522

UNITED STATES OF AMERICA et al.,

Defendants

ORDER

Pending before the Court is a motion to dismiss or for summary judgment filed by the United States of America and the Internal Revenue Service. Defendants assert that they are entitled to judgment because (1) Plaintiffs' have failed to effect proper service of process; (2) the action is barred by the doctrine of sovereign immunity; (3) Plaintifs' complaint fails to state a claim upon which relief can be granted; and (4) the

Court lacks subject matter jurisdiction. Defendants have also moved for attorney's fees pursuant to Rule 11 of the Federal Rules of Civil Procedure. Defendant Ebasco Services has not answered or otherwise pled but, as explained below, neither has proper service been perfected on this Defendant.

Plaintiffs in this action are all employees of Ebasco Services, Inc. and work at a construction site near Bay City, Texas. They filed this suit and claim they are entitled to an injunction, mandamus, declaratory relief and money damages arising out of the assessment of a penalty under Section 6682 of the Internal Revenue Code of 1954. The assessment was based on a determination by the Internal Revenue Service that Plaintiffs had filed false W-4 statements with their employer. Plaintiffs have not responded or otherwise addressed the

pending motion to dismiss and motion for summary judgment.

Defendants first assert that Plaintiffs have failed to effect proper service of process. Upon review of the materials on file, the Court agrees. The file reflects that Plaintiff's sent, by certified mail, a copy of the summons and complaint to the Commissioner of the Internal Revenue Service, Ebasco Services, Inc. and Mr. Barry Wold. This procedure clearly is not in compliance with the service requirements of Federal Rules 4(d)(1), (4), or (5). Plaintiffs' complaint is subject to dismissal pursuant to Rule 12(b)(5) for insufficiency of service of process.

Even if the Plaintiffs had perfected service of process, Defendants claim that they are entitled to judgment. Plaintiffs' suit centers around the assessment and collection of taxes. The

law is clear that the Court has no jurisdiction to grant injunctive relief on such a cause of action. The anti-injunction provisions of the Internal Revenue Code are explicit: "except as provided in (sections not applicable to this action), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person .... " 26 U.S.C. S7421(a). The Court is of the opinion that the only recognized exception to the statute does not apply in this case. See Enochs vs. Williams Packing and Navigation Co., Inc., 370 U.S. 1,7 (1962); Lange vs. Phinney, 507 F.2d 1000 (5th Cir. 1975). Plaintiffs' claims for injunctive relief must fail.

Plaintiffs also seek a declaratory judgment under 28 U.S.C. S.S. 2201 and 2202. The statute explicitly states that declaratory judgment is not an available

remedy in suits based on federal tax liability. Plaintiffs' request for declaratory judgment is barred as a matter of law.

Plaintiffs further allege that Defendants conspired to label Plaintiffs as tax protestors and have acted in a discriminatory, unconstitutional manner. However, Plaintiffs have done nothing more than make blanket allegations in their complaint. They have not supported their statements by any material facts nor have they set forth any specifics relating to the alleged involvement of the Defendants in a conspiracy. Allegations of conspiracy must be supported by more than mere conclusory statements. Sparks vs. Duval County Ranch Co., 604 F.2d 976 (5th Cir. 1979). The Court is of the opinion that Plaintiffs' conspiracy claim should be dismissed for failure to state a claim

upon which relief can be granted. See Fed. R.Civ. P. 12 (b)(6).

Defendants have further moved for costs and attorney's fees in this cause pursuant to 28 U.S.A. S.2412(b) and Federal Rule of Civil Procedure 11. The prevailing party in a suit by or against the United States may be awarded costs and reasonable attorney's fees under 28 U.S.C. S2412(a) and (b). Rule 11 states that the signature of an attorney or a party on a pleading constitutes a certificate that, to the best of his knowledge and after reasonable inquiry, a suit is well grounded in fact and is warranted by existing law. Sanctions, including reasonable expenses incurred and attorney's fees, may be awarded for violation of this Rule. The Court is of the opinion that Plaintiffs' suit is frivolous as a matter of law. Based on the reasoning set forth above, the Court

is of the opiniion that the allegations in Plaintiffs' complaint are not warranted by existing law, nor does the Court believe there a good faith argument for an extension or modification of the law based on the facts presented.

The law of this circuit required the Court to give deference to pro se plaintiffs and to review the facts and circumstances of each case to determine if a pro se plaintiff may have a cognizable claim. However, "the right to self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." Faretta vs. California, 422 U.S. 806, 835 n.46 (1975). In the instant case, Plaintiffs initially failed to meet their responsibility of properly serving all Defendants against whom they brought suit. A reasonable inquiry into

the statutes underlying their claims would have shown that the claims have no legal basis. In most cases, the lack of a cause of action is clearly set forth in a statute. Plaintiffs have failed to state a claim on which to base their remaining allegations. Accordingly, the Court is of the opinion that Defendants are entitled to costs and attorney's fees pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. S2412(a) and (b). It is therefore

ORDERED, ADJUDGED and DECREED that all claims against Ebasco Services, Inc. are DISMISSED for want of prosecution. It is further

ORDERED, ADJUDGED and DECREED that the motion to dismiss or for summary judgment and for attorney's fees filed by the United States of America and the Internal Revenue Service is GRANTED, and attorney's fees and costs shall be assessed against each Plaintiff

individually.

Defendant United States of America shall submit a form of judgment not inconsistent with this Order, as well as an affidavit for attorney's fees.

Done at Houston, Texas, this 19th day of August, 1986.

_____
Norman W. Black
United States District Judge

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF TEXAS, HOUSTON DIVISION

EMMETT DOYLE, MITCH VANYA, JAMES BECKETT, MAX CANTRELL, JAMES CLARK, JOHN DIAL, RUDOLPH HELTON, GEORGE KAY, RAYMOND LYONS, CHARLES MANKEY, LARRY MCMAIN, ROBERT MENDEZ, HASKELL MUSE, BERT PHILLIPS, ELBERT PORTER, STEVE POTVIN, RAYMOND ROBERTS, FRANK SEBESTA, GEORGE SIMMONS, KENNETH SKEEN, ROBERT THORNTON JOHN VARNER, L.D. WASHINGTON, SHIRLEY WINN, ROBERT DALE NETTLES, for themselves and as the representatives of all others similarly situated,	)	
Plaintiffs	)	CIVIL NO. H-85-6522
VS.	)	
UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, EBASCO SERVICES, INC., BARRY L. WOLD, and other unknown, named, agents, officers and employees of the INTERNAL REVENUE SERVICE	)	
Defendants	)	

FINAL JUDGEMENT

Pursuant to the Order entered August 19, 1986, reciting the findings and conclusions of this Court, it is hereby

ORDERED, ADJUDGED, AND DECREED that

all claims against Ebasco Services, Inc., are DISMISSED for want of prosecution. It is further

ORDERED, ADJUDGED, AND DECREED that the motion to dismiss or for summary judgment and for attorneys' fees filed by the United States of America and the Internal Revenue Service is GRANTED. Attorneys' fees and costs are hereby assessed against each plaintiff, individually, in the amount of $1,554.88, to be paid by each plaintiff to Defendant United States of America within 30 days from the entry of this Order, such multiple attorneys' fees being imposed as a sanction for plaintiffs' violation of Rule 11, Federal Rules of Civil Procedure.

DONE at Houston, Texas, this 29th day of September, 1986.

NORMAN BLACK
UNITED STATES DISTRICT JUDGE

BILL OF COSTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

EMMETT DOYLE, ET AL.

V.

UNITED STATES OF AMERICA, ET AL.

DOCKET NO. H-85-6522

Judgement having been entered in the above entitled action on August 19, 1986 against all Plaintiffs the clerk is requested to tax the following as costs:

Bill of Costs

Fees of the clerk ....$_____

Fees for service of summons and complaint.....$_____

Fees of the court reporter for all or any of transcript necessarily obtained for use in the case .....$_____

Fees and disbursements for printing.....$_____

Fees for witnesses (itemized on reverse side .....$_____

Fees for exemplification and copies of papers necessarily obtained for use in case .....$_____

Docket fees under 28 U.S.C. S.1923
$_____

Costs incident to taking of depositions.....$_____

Costs as shown on Mandate of Court of Appeals.....$_____

Other costs: Attorney's Fees $1,554.88

TOTAL $1,554.88

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charges were actually and necessarily performed. A copy hereof was this day mailed with postage fully prepaid thereon to all plaintiffs.

SIGNATURE OF ATTORNEY: M.C. Vance

For: United States of America

Date: 9/12/86

Costs are hereby taxed in the following amount and included in the judgment: Amount taxed $1,554.88

Clerk of the Court: Jessee E. Clark

Deputy Clerk: B.L. Hoffmann

Date: Oct. 1, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

EMMETT DOYLE, ET AL)

Plaintiff

VS.) Civil Action No. H-85-6522

UNITED STATES OF AMERICA, ET AL

Defendant.)

DECLARATION OF E. TIMOTHY WAGNER

I, E. TIMOTHY WAGNER, declare as follows:

1. That I am Director of the Comptroller Staff of the Tax Division, United States Department of Justice, and that in the course of my duties, have oversight responsibility for preparing the Divison's annual budget requests and closely monitoring the expenditure of all Division funds allotted to the Assistant Attorney General in charge of the Tax Division.

2. That all of the work done by the Tax Division is connected to the

litigation efforts of Tax Division attorneys and the policy-making and administrative activities related to these litigation efforts.

3. The total Tax Division expenditures for overhead during fiscal year 1985 were calculated as follows:

Executive and support staff salaries and benefits (exclusive of paralegal salaries and benefits): $7,255.554

Other Costs:

Office space rental: $1,586.687

Equipment rentals, printing, and other administrative and litigative expenses: $3,176,518

Supplies and office equipment: $2,473,227

Total: $14,491,986

4. The calculated overhead costs per Tax Division Attorney during fiscal year 1985 are as follows:

Average number of Attorneys (excluding Office of the A.A.G.): 285

Total overhead costs: $14,491,986

Average per attorney $50,849

5. The overhead costs per attorney on an hourly basis were calculated as follows:

Number of workhours per year: 2,087

Average per attorney overhead: $50,849

Average attorney overhead per hour: $24.36

Overhead per attorney hour:

Executive and support staff salaries and benefits: $12.20

Office space rental: $2.66

Equipment rentals, printing, and other administrative and litigative expenses: $5.34

Supplies and office equipment $4.16

$24.36

6. Mary L. Vance is an Attorney in the Tax Division, Southern Region, Dallas Field Office. The hourly salary cost to the Tax Division for Ms. Vance is computed as follows:

$37,599 per annum =	$18.02	plus benefits of
	$ 1.98	per hour
2,087 hours	$20.00	per hour

Ms. Vance recorded a total of 8.0 hours on this case.

7. Total Tax Division costs with respect to this case is as follows:

Salary Cost for Ms. Vance	$160.00
Overhead Cost	$194.88
	$354.88

I declare under penalty of perjury that the foregoing is true and correct. Executed on this the 2nd day of September, 1986.

E. Timothy Wagner

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EMMETT DOYLE, MITCH VANYA, JAMES BECKETT, MAX CANTRELL, JAMES CLARK, JOHN DIAL, RUDOLPH HELTON, GEORGE KAY RAYMOND LYONS, CHARLES MANKEY LARRY MCMAIN, ROBERT MENDEZ, HASKELL MUSE, BERT PHILLIPS, ELBERT PORTER, STEVE POTVIN, RAYMOND ROBERTS, FRANK SEBESTA GEORGE SIMMONS, KENNETH SKEEN ROBERT THORNTON, JOHN VARNER, L.D. WASHINGTON, SHIRLEY WINN ROBERT DALE NETTLES, for themselves and as the representatives of all others similarly situated,	
Plaintiffs	
VS.	CIVIL NO. H-85-6522
UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE EBASCO SERVICES INC., BARRY L. WOLD, and other unknown, named, agents, officers and employees of the INTERNAL REVENUE SERVICE	
Defendants	

DECLARATION OF THOMAS G. NORMAN

I, THOMAS G. NORMAN, declare as follows:

1. I am a trial attorney with the

Office of Chief Counsel, Internal Revenue Service.

2. I have been designated as a Special Agent Assistant United States Attorney with the United States Attorney's Office for the Southern District of Texas, in the course of my duties, I have assisted Department of Justice Attorney Mary Vance in the litigation of Case No. H-85-6522.

3. Since assuming responsibility for the above-named case, I have reasonably expended sixteen hours in various duties relating hereto which include reviewing the file, becoming familiar with the case, research, obtaining information and documents and drafting pleadings in connection with preparation of the instant Statement of Attorney's Fees.

4. Even though the usual, reasonable and customary fee for such

legal work is $100.00 per hour, the government requests reimbursement, for my attorney work, in the amount of $75.00 per hour. Sixteen hours x $75.00 = $1200.00. The Equal Access to Justice Act, 28 U.S.C. S2412 allows attorneys fees of $75.00 per hour to be awarded to persons who are prevailing parties in litigation against the government; hence a $75.00 hourly rate is a reasonable rate to be used when the government is requesting fees by sanction against a pro se litigant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/3/86.

By: _____

Thomas G. Norman
Special Assistant
United States Attorney
P.O. Box 61129
Houston, Texas 77208
Tel. No. 713/229-2230

APPENDIX "B"

DOYLE VS. U.S.

Emmett Doyle, et al., Plaintiffs,

Mitch Vanya, Max Cantrell, George Kay, Raymond Lyons, L.D. Washington, Charles Mankey, George Simmons, Raymond Roberts, John Varner and Frank Sebesta,

Plaintiffs-Appellants,

vs.

UNITED STATES of America, Internal Revenue Service, Ebasco Services, Incorporated, et al.

Defendants-Appellees.

No. 86-6004

United States Court of Appeals, Fifth Circuit

June 2, 1987

After Internal Revenue Service assessed $500 penalty against each employee claiming exemptions from all income tax withholding, employees responded with pro se class action for declaratory and injunctive relief, and actual and punitive damages. The United States District Court for the Southern

District of Texas at Houston, Norman W. Black, J., granted the United States' unopposed motion to dismiss and assessed Rule 11 sanctions against each plaintiff individually. Plaintiffs appealed award under Rule 11. The Court of Appeals, Gee, Circuit Judge, held that: (1) government attorneys' unopposed affidavits requesting Rule 11 sanctions were adequate, and (2) district court could require each taxpayer, individually, to pay back through Government to other taxpayers the costs of his frivolous behavior had he filed individual lawsuit and not sought psychological and financial refuse of aggregate lawsuit.

Affirmed.

1. Federal Civil Procedure - 2721

Affidavits which stated that persons whose attorney fees were at issue were government attorneys were sufficient for

purpose of Rule 11, and government attorneys did not have to aver that they were licensed to practice law. Fed.Rules Civ. Proc. Rule 11, 28 U.S.C.A.

2. Federal Civil Procedure - 2721

District court can rely on unopposed affidavits and is not required to hold evidentiary hearing to set attorney fees for Rule 11 purposes. Fed.Rules Civ.Proc. Rule 11, 28 U.S.C.A.

3. Federal Civil Procedure - 2721

Government attorneys, seeking sanctions for violation of Rule 11, did not have to aver that attorney fees requested were based on personal knowledge of customary and reasonable rates or explicitly state in affidavits that requested fees were "necessary". Fed.Rules Civ. Proc. Rule 11, 28 U.S.C.A.

4. Federal Civil Procedure - 2721

Amount of $1,554.88 awarded against each taxpayer individually for his or her

violation of Rule 11 was within district court's discretion. Fed.Rules Civ.Proc. Rule 11, 28 U.S.C.A.

5. Federal Civil Procedure - 2721

Type and amount of Rule 11 sanction is within discretion of district court. Fed.Rules Civ.Proc. Rule 11, 28 U.S.C.A.

6. Federal Civil Procedure - 2721

Under rule 11, district court could require each pro se taxpayer, individually, to pay back through government to other taxpayers the costs of his frivolous behavior had he filed individual lawsuit and not sought psychological and financial refuge of aggregate lawsuit. Fed.Rules Civ.Proc. Rule 11, 28 U.S.C.A

Appeal from the United States District Court for the Southern District of Texas.

Before WRIGHT, *, GEE, and JOLLY, Circuit Judges.

GEE, Circuit Judge:

Ten plaintiffs appeal an award under Rule 11 of the full amount of the defendant's attorney's fees against each of them individually. We affirm.

Twenty-five employees of defendant Ebasco Services filed W-4 forms claiming exemptions from all income tax withholding. The Internal Revenue Service disagreed with these claims; it assessed a $500 penalty against each employee under 26 U.S.C. 6682, and directed Ebasco to ignore their invalid W-4 forms and withhold wages.

The disgruntled employees responded with a pro se class-action for injunctive and declaratory relief, actual damages in the amount of $50 million, and punitive damages in the amount of $100 billion.

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* Circuit Judge of the Ninth Circuit, sitting by designation.

The more intelligible of their claims are summarized in the margin.[1] The United States did not bother to answer, but simply filed a motion to dismiss or for

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1. Plaintiffs brought an action on behalf of "all wage earners in the United States who have claimed exemption from federal income tax witholding ..." They alleged that "each class member has indicated exemption from federal tax withholding ... and has sought redress as well as spoken out publicly, including in the workplace, concerning the well known GESTAPO tactics of the IRS." The complaint asserted various causes of action arising under federal statute and the Constitution, alleging that Ebasco had forwarded their W-4 forms to the IRS as part of conspiracy; that Ebasco and the IRS had wrongfully refused to acknowledge the validity of certain documents claiming that the plaintiffs "no longer volunteer" for witholding, that they were not employees, that they were not subject to the "excise" tax on wages, that personal labor is property, that the federal income tax is voluntary, and that property, including compensation for services, is not taxable income. Plaintiffs also alleged in their complaint that the "psuedo [sic] Regulations" of the IRS concerning income tax withholding were illegal for various reasons, including that the Regulations "operate in such a manner as to sanction, condone and encourage terrorism."

summary judgement on various grounds, requesting attorney's fees under Rule 11. The motion was unopposed. The district court granted the motion to dismiss, holding that the suit was frivolous as a matter of law. After requesting and receiving affidavits from the government attorneys claiming $1,554.88 in costs and attorney's fees, the district court entered judgment, dismissing plaintiffs claims with prejudice and assessing $1,554.88 against each plaintiff individually for his or her violation of Rule 11. Fed.R.Civ.P. 11.[2] Ten of the

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2 The pertinent part of Rule 11 reads (with our emphasis):
The signature (on a pleading, motion, or other paper) of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose ... If a pleading, motion, or other

original twenty-five plaintiffs retained counsel and brought this appeal. They challenge only the amount of sanctions for their admitted violation of Rule 11.

(1-4) The appellants are unhappy with the way they were treated in the district court, and they complain about various aspects of the outcome. As far as we can tell, however, their appeal asks us to consider seriously only two arguments. First, appellants argue that the district court erred in awarding the amount of attorney's fees requested in the government's affidavits because the affidavits did not set out a "proper predicate" for the claimed amounts. They

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paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it ... an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

point out that the government attorneys did not aver that they were licensed to practice law, and they argue that this particular assertion is a necessary part of an affidavit for attorney's fees. We disagree. The district court can rely on unopposed affidavits and is not required to hold an evidentiary hearing to set attorney's fees for Rule 11 purposes. Davis vs. Veslan Enterprises, 765 F.2d 494, 500 n. 12 (5th Cir. 1985). Both affidavits state that the persons whose fees are at issue were government attorneys, and the appellants do not suggest that the government attorneys were in fact practicing law without a licence. That is enough of a factual "predicate" for the district court to grant attorney's fees. Appellants also balk at the affiants' failure to aver that the attorney's fees they request are based on personal knowledge of a

customary and reasonable rates; also, they complain about the lack of an explicit statement in the affidavits that the requested attorney's fees were "necessary." These omissions are asserted to be a sort of evidentiary failure - the appellants use the phrase "conclusory allegations" - that leaves the district court's award of fees "unsupported" in the record. Again, the appellants do not contend that the fees were in fact too high.[3] We find the unopposed affidavits adequate, and the amount of fees awarded by the district court within its discretion.

Second, the appellants argue that the total award of $38,872.00 in attorney's fees - $1,554.88 against each of 25 plaintiffs individually - is "unprecedented" and "dangerous". They

3 The government requested $194.88 in costs and $1,360 in attorney's fees (24 hours of attorney time at an average of $56. per hour.

contend that the multiplication of reasonable attorney's fees is prohibited by Rule 11, which speaks only of "reasonable expenses incurred ... including a reasonable attorney's fees." They point to the absence of case law allowing an award of attorney's fees against each person participating in a Rule 11 violation as support for their position that such an award is prohibited. The appellants do not suggest that the actual dollar amount of sanctions against each of them was so large as to be an abuse of the district court's discretion.

(5,6) Each plaintiff signed the admittedly frivolous complaint; sanctions against each were clearly called for under Rule 11. See Robinson vs. National Cash Register Co., 808 F.2d 1119, 1130-31 (5th Cir. 1987). The type and amount of the sanction - in the words of the Rule,

"an appropriate sanction" - is within the discretion of the district court. Davis vs. Veslan Enterprises, 765 F.2d at 500-01. The rule permits but does not require that the district court award attorney's fees: "an appropriate sanction ... may include an order to pay the other party ... reasonable expenses incurred ... including a reasonable attorney's fees." There is absolutely no doubt that the court could have assessed an outright sanction of $1,554.88 against each plaintiff without mentioning "attorney's fees" or tying the amount of the sanction to the government's costs. As noted, the appellants make no contention that such an award would be an abuse of discretion, and had they done so we would have rejected it. Therefore, the award of $1,554.88 in "attorney's fees" from each plaintiff to the government must be affirmed. See

Fed.R.Civ.P. 61 (courts "must disregard any error or defect ... which does not affect the substantial rights of the parties"); Fed.R.Civ.P. 1 (the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action"). But all this is a negative justification of the district court's decision - an argument that the court did not err. We must say more to make our views clear.

We think the district court's decision was a wise and equitable resolution of the difficult task of setting "an appropriate sanction" for frivolous lawsuits by pro se litigants. Each plaintiff was required to pay back through the government to other taxpayers the cost of his frivolous behavior had he filed an individual lawsuit and not sought the psychological and financial refuge of aggregate frivolity. This

solution ties the amount of Rule 11 sanctions to the appropriate standard of the opposing party's costs and attorney's fees, eliminating on the one hand the risk of overly punitive sanctions against pro se litigants by harried district judges, and on the other the incentive to huddle together in mass pro se lawsuits in order to minimize the cost of adverse attorney's fee awards. We AFFIRM the judgment of the district court.